



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region08

MAY 18 2017

Ref: 8ENF-AT-TP

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Joshua Huggins, Area District Manager
Presto-X
800 W Lincolnway
Cheyenne, Wyoming 82001

Re: Notice of Violation (NOV) and Opportunity to Confer: Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

Dear Mr. Huggins:

On September 9, 2016, the U.S. Environmental Protection Agency received complaints about several applications of Bifenthrin (EPA Reg. No. 279-3206) by Presto-X to offices located inside the State of Wyoming Department of Health (WY Health) and Northrop Grumman (NG). The complainants, who were employees of the WY Health and NG, stated that they believe that Presto-X applied this pesticide to their office spaces in a way that was inconsistent with label directions. Presto-X applied the pesticide to baseboards, cubicle walls, and work spaces on June 15, 2015, July 7, 2015, July 10, 2015, July 21, 2015, July 22, 2015, and August 3, 2015. Presto-X applied Talastar P (7.9% Bifenthrin, EPA Reg No. 279-3206) to WY Health and their contractor NG's offices and cubicles located at 6101 Yellowstone Road, suites 259 B, 259 C, and 259 D, Cheyenne, Wyoming for the treatment and control of bedbugs. Employees were not asked to leave or to wait until the pesticide was dry before returning to their work stations. There were also applications that were applied within a few days. This is inconsistent with the Talastar P label directions which states, "Do not allow people or pets on treated surfaces until the spray has dried.", "Allow all treated areas to thoroughly dry before use.", and "Limit repeat application to no more than once per seven days." Due to the employee's complaints, OSHA did an investigation and found detectable residues of Bifenthrin on cubicle walls and floors in samples collected on September 30, 2015. Both complainants experienced health related conditions associated with these applications that are consistent with Bifenthrin exposure.

The evidence collected demonstrates that Presto-X used a registered pesticide in a manner inconsistent with its labeling. The labeling includes directions that state, "*Do not allow people or pets on treated surfaces until the spray has dried.*", "*Allow all treated areas to thoroughly dry before use.*", and "*Limit repeat application to no more than once per seven days.*" Using a registered pesticide in a manner inconsistent with its labeling is an unlawful act of FIFRA as noted in section 12(a)(2)(G), of FIFRA, 7 U.S.C. § 136j(a)(2)(G). A civil penalty for violating FIFRA § 14(a), 7 U.S.C. § 136l(a) allows for penalties of not more than \$5,000 for each offense.

The EPA is proposing an enforcement action in the form of an administrative civil penalty complaint for the FIFRA violations described above. In determining the amount of any penalty to propose in an enforcement action for violations of FIFRA, section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires the EPA to take into consideration the appropriateness of the penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation. The EPA's "Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (ERP)" (December 2009) and "Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to account for inflation (Effecting August 1, 2016)" are used to calculate civil penalties and can be found at the following web address:

<http://www2.epa.gov/sites/production/files/documents/fifra-erp1209.pdf>, and

<https://www.gpo.gov/fdsys/pkg/FR-2016-07-01/pdf/2016-15411.pdf>

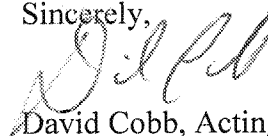
By this letter, the EPA is offering you an opportunity to enter into settlement discussions for the purpose of reaching a mutual agreement regarding an appropriate penalty in this matter, prior to the issuance of an administrative civil penalty complaint. For your reference, please find the enclosed copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. part 22, which details the administrative procedures that will be followed should it be necessary to file an administrative civil penalty complaint.

If you believe that you do not have the financial ability to pay EPA's proposed penalty, please contact us so that we can instruct you on how to provide the EPA with appropriate financial documentation to substantiate such a claim. Such documentation will include, among other things, several years of signed federal income tax returns and financial statements, in addition to an official EPA financial form that must be completed before the EPA can conduct an ability to pay analysis. Please contact us with your inability to pay request at the earliest opportunity.

The Small Business Regulatory Enforcement and Fairness Act (SBREFA) may apply to you. Therefore, also enclosed is a small business information sheet, outlining compliance assistance resources available to small businesses and small governments, in case these are relevant to you. Note that SBREFA does not eliminate your responsibility to comply with FIFRA.

If you are interested in engaging in pre-filing settlement discussions or if you have legal questions, please contact Marc Weiner who is an Enforcement Attorney in the Legal Enforcement Program within thirty days of your receipt of this letter at (303) 312-6913. If you have technical questions, please contact Sherrie Kinard in the Technical Enforcement Program at (303) 312-6613.

Sincerely,



David Cobb, Acting Unit Chief
Technical Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice

Enclosures

cc: Marc Weiner, LEP
Vonnie, Complainant, 2738 Chrysler Road, Cheyenne, WY 82009
Brenda Davenport, Complainant, 4220 Hayes Avenue, Cheyenne, WY 82001



U.S. EPA Small Business Resources Information Sheet

The United States Environmental Protection Agency provides an array of resources to help small businesses understand and comply with federal and state environmental laws. In addition to helping small businesses understand their environmental obligations and improve compliance, these resources will also help such businesses find cost-effective ways to comply through pollution prevention techniques and innovative technologies.

Small Business Programs

www.epa.gov/smallbusiness
EPA's Office of Small Business Programs (OSBP) advocates and fosters opportunities for direct and indirect partnerships, contracts, and sub-agreements for small businesses and socio-economically disadvantaged businesses.

EPA's Asbestos Small Business Ombudsman

www.epa.gov/sbo or 1-800-368-5888
The EPA Asbestos and Small Business Ombudsman (ASBO) serves as a conduit for small businesses to access EPA and facilitates communications between the small business community and the Agency.

EPA's Compliance Assistance Homepage

www2.epa.gov/compliance
This page is a gateway industry and statute-specific environmental resources, from extensive web-based information to hotlines and compliance assistance specialists.

EPA's Compliance Assistance Centers

www.assistancecenters.net
EPA's Compliance Assistance Centers provide information targeted to industries with many small businesses. They were developed in partnership with industry, universities and other federal and state agencies.

Agriculture

www.epa.gov/agriculture/

Automotive Recycling

www.ecarcenter.org

Automotive Service and Repair
ccar-greenlink.org/ or 1-888-GRN-LINK

Chemical Manufacturing
www.chemalliance.org

Construction
www.cicacenter.org or 1-734-995-4911

Education
www.campuserc.org

Food Processing
www.fpeac.org

Healthcare
www.hercenter.org

Local Government
www.lgean.org

Metal Finishing
www.nmfrc.org

Paints and Coatings
www.paintcenter.org

Printing
www.pneac.org

Ports
www.portcompliance.org

Transportation
www.tercenter.org

U.S. Border Compliance and Import/Export Issues
www.bordercenter.org

EPA Hotlines, Helplines and Clearinghouses

www2.epa.gov/home/epa-hotlines
EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. Some examples are:

Clean Air Technology Center (CATC) Info-line
www.epa.gov/ttn/catc or 1-919-541-0800

Superfund, TRI, EPCRA, RMP and Oil Information Center
www.epa.gov/superfund/contacts/infocenter/index.htm or 1-800-424-9346

EPA Imported Vehicles and Engines Public Helpline
www.epa.gov/otaq/imports or 734-214-4100

National Pesticide Information Center
www.npic.orst.edu/ or 1-800-858-7378

National Response Center Hotline to report oil and hazardous substance spills - www.nrc.uscg.mil or 1-800-424-8802

Pollution Prevention Information Clearinghouse (PPIC) - www.epa.gov/opptintr/ppic or 1-202-566-0799

Safe Drinking Water Hotline - www.epa.gov/drink/hotline/index.cfm or 1-800-426-4791

Stratospheric Ozone Protection Hotline

www.epa.gov/ozone/comments.htm or 1-800-296-1996

Toxic Substances Control Act (TSCA) Hotline

tsc hotline@epa.gov or 1-202-554-1404

Small Entity Compliance Guides

<http://www.epa.gov/sbrefa/compliance-guides.html>

EPA publishes a Small Entity Compliance Guide (SECG) for every rule for which the Agency has prepared a final regulatory flexibility analysis, in accordance with Section 604 of the Regulatory Flexibility Act (RFA).

Regional Small Business Liaisons

<http://www.epa.gov/sbo/rsbl.htm>

The U.S. Environmental Protection Agency (EPA) Regional Small Business Liaison (RSBL) is the primary regional contact and often the expert on small business assistance, advocacy, and outreach. The RSBL is the regional voice for the EPA Asbestos and Small Business Ombudsman (ASBO).

State Resource Locators

www.envcap.org/statetools

The Locators provide state-specific contacts, regulations and resources covering the major environmental laws.

State Small Business Environmental Assistance Programs (SBEAPs)

www.epa.gov/sbo/507program.htm

State SBEAPs help small businesses and assistance providers understand environmental requirements and sustainable business practices through workshops, trainings and site visits.

EPA's Tribal Portal

www.epa.gov/tribalportal/

The Portal provides access to information on environmental issues, laws, and resources related to federally recognized tribes.

EPA Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated, businesses may be eligible for penalty waivers or reductions. EPA has two such policies that may apply to small businesses:

EPA's Small Business Compliance Policy

www2.epa.gov/enforcement/small-businesses-and-enforcement

This Policy offers small businesses special incentives to come into compliance voluntarily.

EPA's Audit Policy

www2.epa.gov/compliance/epas-audit-policy

The Policy provides incentives to all businesses that voluntarily discover, promptly disclose and expeditiously correct their noncompliance.

Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established a SBREFA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System designation, number of employees or annual receipts, as defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

Your Duty to Comply

If you receive compliance assistance or submit a comment to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.